IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1490 of 1981

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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GUJARAT STATE AGRI. DEPTT - Appellant(s)
Versus
HIRALAXMI JAYANTILAL WD/O JAYANTILAL GABHRUBHAI & 5 - Defendant(s)

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Appearance :

GOVERNMENT PLEADER for Appellant(s) : 1,
MR JD AJMERA for Defendant(s) : 1,
None for Defendant(s) : 2 - 5.
MR YN RAVANI for Defendant(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 22/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal, Bhavnagar passed in M.A.C.P. No.17 of 1980 dated 1st May, 1981 whereby the Tribunal partly allowed the said petition.

2.0 The brief facts of the case are that on the day of incident the deceased-Jayantilal

Gabhrubhai was traveling in a truck driven by present opponent No.5 in the employment of the present appellant and at that time, the said truck met with an accident with a truck driven by present opponent No.3 and owned by present opponent No.4. On account of the said accident, the deceased received serious bodily injuries and expired. Therefore, present opponent Nos. 1 and 2 being heirs and legal representatives of the deceased filed a petition claiming an amount of Rs.70,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard. It was the case of the opponent Nos. 1 and 2 before the Tribunal that on the day of incident the deceased was traveling in a truck driven by opponent No.5 and when opponent No.5 tried to overtake a truck driven by opponent No.3 the accident in question took place and the

deceased lost his life. The story put forward by the opponent Nos. 1 and 2 is not denied by the appellant as well as opponent Nos.5 and 6. On the contrary, they have accepted that the deceased expired on account if the accident in question vide their written statements produced at Exhibit-5 and Exhibit-13 respectively. It may be noted that opponent Nos. 3 and 4 neither filed any reply nor led any evidence in support of their case. Therefore, the Tribunal is justified in holding that the deceased lost his life on account of the accident in question, and hence, opponent Nos. 1 and 2 are entitled for compensation.

3.1 As regards the contention of the learned Advocate for the appellant that there was contributory negligence on the part of opponent No.3 is concerned, it may be noted that the truck driven by opponent No.5 after colliding with the truck driven by opponent No.3 went down the road, covered a distance of about 100 to 175 feet,

crossed over the ditch on the right side of the road and went into the hedge of a nearby field and thereafter went turtle. The said fact clearly shows that the opponent No.5 was driving the truck in rash and negligent manner. Therefore, the Tribunal was justified in holding that since the opponent No.5, while in the employment of the appellant, was driving the truck in rash and negligent manner so as to endanger human life on the road, the appellant is liable to satisfy the claim in question.

3.2 Learned Advocate for the appellant has further raised a contention that the Tribunal has committed an error in awarding an amount of Rs.10,000/- towards the marriage expenses of the opponent No.2 assuming that the deceased would have contributed that amount if he would have been alive. The said contention raised by the learned Advocate for the appellant requires to be accepted in view of the fact that under the provisions of the M.V. Act while calculating the

amount of compensation no amount under the head such as expenses towards marriage can be granted. Hence, the direction of the Tribunal granting Rs.10,000/- towards the head of marriage expenses requires to be quashed and set aside. The appellant, hence, shall be refunded an amount of Rs.10,000/- which was granted by the Tribunal under the head of marriage expenses of the opponent No.2.

3.3 It may be noted that while considering the aspect of compensation, the Tribunal has taken into consideration the medical and other evidence available on record as well as injuries caused to deceased and the fact that he was earning Rs.800 to Rs.1,000/- per month.

4.0 In the result, the appeal is partly allowed. The amount of Rs.10,000/- which was deposited by the appellant towards the marriage expenses of the opponent No.2 will be refunded to it. It may be noted that the interest accrued on the said amount will be given to the opponent

Nos.1 and 2 i.e. original claimants. The judgment and award of the Motor Accident Claims Tribunal, Bhavnagar passed in M.A.C.P. No.17 of 1980 dated 1st May, 1981 is modified to the aforesaid extent. Rest of the judgment and award is confirmed. No order as to costs.

(K. S. Jhaveri, J.)

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